

ASSEMBLY BILL

No. 2177

Introduced by Assembly Member Valadao

February 23, 2012

An act to amend Section 646.9 of the Penal Code, relating to stalking.

LEGISLATIVE COUNSEL'S DIGEST

AB 2177, as introduced, Valadao. Stalking.

Under existing law, any person who willfully, maliciously, and repeatedly follows, or willfully and maliciously harasses another person, and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than \$1,000, or by both that fine and imprisonment, or by imprisonment in the state prison.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 646.9 of the Penal Code is amended to
2 read:
3 646.9. (a) Any person who willfully, maliciously, and
4 repeatedly follows or willfully and maliciously harasses another
5 person and who makes a credible threat with the intent to place
6 that person in reasonable fear for his or her safety, or the safety of

1 his or her immediate family is guilty of the crime of stalking,
2 punishable by imprisonment in a county jail for not more than one
3 year, or by a fine of not more than one thousand dollars (\$1,000),
4 or by both that fine and imprisonment, or by imprisonment in the
5 state prison.

6 (b) Any person who violates subdivision (a) when there is a
7 temporary restraining order, injunction, or any other court order
8 in effect prohibiting the behavior described in subdivision (a)
9 against the same party, shall be punished by imprisonment in the
10 state prison for two, three, or four years.

11 (c) (1) Every person who, after having been convicted of a
12 felony under Section 273.5, 273.6, or 422, commits a violation of
13 subdivision (a) shall be punished by imprisonment in a county jail
14 for not more than one year, or by a fine of not more than one
15 thousand dollars (\$1,000), or by both that fine and imprisonment,
16 or by imprisonment in the state prison for two, three, or five years.

17 (2) Every person who, after having been convicted of a felony
18 under subdivision (a), commits a violation of this section shall be
19 punished by imprisonment in the state prison for two, three, or
20 five years.

21 (d) In addition to the penalties provided in this section, the
22 sentencing court may order a person convicted of a felony under
23 this section to register as a sex offender pursuant to Section
24 290.006.

25 (e) For the purposes of this section, “harasses” means engages
26 in a knowing and willful course of conduct directed at a specific
27 person that seriously alarms, annoys, torments, or terrorizes the
28 person, and that serves no legitimate purpose.

29 (f) For the purposes of this section, “course of conduct” means
30 two or more acts occurring over a period of time, however short,
31 evidencing a continuity of purpose. Constitutionally protected
32 activity is not included within the meaning of “course of conduct.”

33 (g) For the purposes of this section, “credible threat” means a
34 verbal or written threat, including that performed through the use
35 of an electronic communication device, or a threat implied by a
36 pattern of conduct or a combination of verbal, written, or
37 electronically communicated statements and conduct, made with
38 the intent to place the person that is the target of the threat in
39 reasonable fear for his or her safety or the safety of his or her
40 family, and made with the apparent ability to carry out the threat

1 so as to cause the person who is the target of the threat to
2 reasonably fear for his or her safety or the safety of his or her
3 family. It is not necessary to prove that the defendant had the intent
4 to actually carry out the threat. The present incarceration of a
5 person making the threat shall not be a bar to prosecution under
6 this section. Constitutionally protected activity is not included
7 within the meaning of “credible threat.”

8 (h) For purposes of this section, the term “electronic
9 communication device” includes, but is not limited to, telephones,
10 cellular phones, computers, video recorders, fax machines, or
11 pagers. “Electronic communication” has the same meaning as the
12 term defined in Subsection 12 of Section 2510 of Title 18 of the
13 United States Code.

14 (i) This section shall not apply to conduct that occurs during
15 labor picketing.

16 (j) If probation is granted, or the execution or imposition of a
17 sentence is suspended, for any person convicted under this section,
18 it shall be a condition of probation that the person participate in
19 counseling, as designated by the court. However, the court, upon
20 a showing of good cause, may find that the counseling requirement
21 shall not be imposed.

22 (k) (1) The sentencing court also shall consider issuing an order
23 restraining the defendant from any contact with the victim, that
24 may be valid for up to 10 years, as determined by the court. It is
25 the intent of the Legislature that the length of any restraining order
26 be based upon the seriousness of the facts before the court, the
27 probability of future violations, and the safety of the victim and
28 his or her immediate family.

29 (2) This protective order may be issued by the court whether
30 the defendant is sentenced to state prison, county jail, or if
31 imposition of sentence is suspended and the defendant is placed
32 on probation.

33 (l) For purposes of this section, “immediate family” means any
34 spouse, parent, child, any person related by consanguinity or
35 affinity within the second degree, or any other person who regularly
36 resides in the household, or who, within the prior six months,
37 regularly resided in the household.

38 (m) The court shall consider whether the defendant would
39 benefit from treatment pursuant to Section 2684. If it is determined
40 to be appropriate, the court shall recommend that the Department

1 of Corrections and Rehabilitation make a certification as provided
2 in Section 2684. Upon the certification, the defendant shall be
3 evaluated and transferred to the appropriate hospital for treatment
4 pursuant to Section 2684.

O